

Safer Communities Safer Canada

- ▶ A critical review of the *Youth Criminal Justice Act*
- ▶ Proposals for action on youth crime



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Introduction

CRIME AND PUNISHMENT are never easy to deal with. Youth crime may be the most difficult of all. This paper sets out the best we have to offer on the issues of the prevention and control of youth crime in Canada.

The main goal is to provide a critical review of the *Youth Criminal Justice Act* and an analysis of the prevention and control efforts of governments in Canada.

We believe it is important that our analysis and review be supported by a broader perspective and general philosophy of how to effectively combat youth crime.

That is why Part One of the paper sets out a balanced, principled, and coherent approach to youth crime supported by the National Union. It describes a multi-pronged approach to tackling youth crime and creating safer communities.

Part Two is an overview of the *Youth Criminal Justice Act* (YCJA).

Part Three is a critical review of the impact of the one-year-old YCJA and the efforts of the federal and provincial governments to tackle youth crime.

Part Four concludes the paper with some specific recommendations for future prevention and control strategies.

Many people assisted with this paper. In particular, I want to thank the members of the National Union's Working Group of Correctional Officers and Youth Facility Workers who contributed extensively by providing valuable ideas and information and thoughtful review comments.

I would also like to thank them for their tireless and tenacious efforts to improve our criminal justice system. It is my sincere hope that all

of the hard work and honest effort these front-line workers put into this brief will not fall on deaf ears.

All of us have a direct interest in making our country a safer place in which to live, work, and play. We hope this paper will stimulate debate about the YCJA specifically, and the youth justice system in general. We hope this will, in turn, encourage Canadians to view the future youth crime policies of their elected officials with a more critical eye.

It is important that all of us strengthen our determination to influence how youth justice is served and continue working together to fashion safer communities in Canada.

In solidarity,



James Clancy
National President

Part One

▶ ✪ A REAL THREAT ✪ ▶ NO REAL ANSWERS ✪ ▶ A REAL WAY OUT





A real threat

THERE IS NO DOUBT youth crime damages the lives of individuals and communities.

Serious acts of violence hit the headlines and create fear. The daily round of abuse and vandalism makes life difficult and often miserable for many people. More Canadians report they feel unsafe in their own homes and communities.

Youth crime touches small towns and big cities alike. Nobody and no community are immune to its potential effects. Unfortunately, because the vast majority of youth crime involves non-violent property offences, it is often the poor and the vulnerable and the neglected – those individuals, families and communities least able to afford expensive security systems, insurance policies or adequate policing – that suffer the most.

Fear of youth crime is a serious problem as well. It can diminish our quality of life. It can restrict the lifestyle and freedom of particular groups of people, such as women and the elderly. The fear and apprehension crime generates can also be controlling. It can breed distrust, generate intolerance and lead people to harbour suspicions against others.

Although consequences of youth crime are indeed often property damage, physical harm, and fear, the financial cost of crime is also enormous. Apprehending, sentencing, incarcerating and rehabilitating criminals cost the federal and provincial governments over \$11 billion a year. There are the collateral financial costs of crime as well: property loss, security systems, insurance premiums, and crime-related hospitalization.

Youth crime also affects the economic development of a community. In communities hard hit by youth crime, housing prices drop and industries by-pass these communities when making capital investment decisions. As the tax base for these communities disappears, infrastructure deteriorates and economic and social development grinds to a standstill.

Plainly, preventing and controlling youth crime is critical to improving the quality of life and sense of safety for people. It is about restoring people's freedom and dignity. It is about rebuilding people's faith in our youth criminal justice system. It is about building secure families and thriving communities. It is about economic and social investment.

We all have a direct interest in a youth crime policy that works.

No real answers

ALL THE NARROW, TRADITIONAL approaches have failed. Canadians have repeatedly looked to their governments to protect them from youth crime but the conventional policies and fragmented approaches of these governments have been ineffective and ill-considered.

On one hand, some governments have traditionally pointed the finger of blame at the underlying social causes of crime to the virtual exclusion of personal responsibility.

An approach that undervalues or denies personal responsibility has not and will never work. Youth crime – behaviour that breaks community rules – cannot simply be excused on the grounds of social conditions or some nebulous concept of social responsibility.

All of us have the basic right to feel safe, secure and protected in our homes and communities. Young people who commit crime must not be absolved of personal responsibility. They must be held accountable. That is sensible and just.

On the other hand, some governments have traditionally advocated an approach which amounts to getting “tough on kids”. Stripped of its pretensions and rhetoric, this approach amounts to tougher punishments and longer prison sentences.

With its sole focus on what happens after crimes are committed, this approach has also proved singularly ill-equipped to significantly combat youth crime. In fact, the experience of the “tough on kids” mania in the United States – where 22 states still execute teen offenders, but still have some of the highest crime rates in the world – emphatically points to the failure of this approach.

An approach that denies, or fails to accept, that individuals exist within, and are affected by the communities and family circumstances in which they live and function, has not and will never work. It accomplishes little more than making jail a kind of home for disadvantaged kids.

Just as it is unacceptable to deny or ignore personal responsibility, the impact that poverty, broken homes, inadequate housing, unemployment, inner city decay, and poor education have on creating the breeding ground for criminal activity also cannot be denied or ignored.

Both research and common sense indicate that the break up of the social fabric of communities has profound implications for levels of offending. It is completely ineffective to solely focus on reacting to youth crime while allowing its roots to grow deeper.

A real way out

THE TWO NARROW, traditional approaches to youth crime are tired and discredited. Neither has made our communities safer or diminished our fear of youth crime.

Admittedly, the situation in Canada is not as dire as it is often portrayed by the media. However, our youth crime rate is—and should be—a real concern.

Of course, the real extent of offending is far higher than any figure implies because a lot of crime goes undetected by police and unreported by the public.

It is time to change course and construct a new approach that will work against young criminals AND the social conditions that breed criminal activity.

An effective approach to combating youth crime seeks to escape the set of false choices offered by the two narrow, traditional approaches: between social or personal responsibility, prevention or accountability.

Old “chicken-and-egg” arguments concerned with whether the causes of crime are the fault of the individual criminal or society are about as effective as that same old riddle was at determining the origins of life.

The fact is that the causes of crime are both individual and social. As such, governments must deal with both. They must act to improve social conditions and they must act to adequately hold young criminals personally accountable.

Clearly, the problem of youth crime will never be “solved”. But a lot of it can be prevented. Re-offending rates can be reduced. Serious and violent young offenders can be controlled and rehabilitated.

There are no simple answers or “one-size-fits-all” solutions. Rather, success ultimately depends on a sensible and effective three-part response of:

- prevention;
- diversion;
- sentencing.

The possibility of success for this multiple response depends on quality public services.

It is essential our governments provide a strong fiscal presence of adequate and stable funding for community programs and a strong social structure. Equally important is the physical presence of adequate staff and facilities on the frontlines in the battle against youth crime.



Response #1: Prevention

AN EFFECTIVE youth crime strategy begins with prevention. Most people understand we will never be able to arrest and imprison our way out of the youth crime problem.

What are needed are front-end approaches that prevent youth crime.

The direct link between economic hardship and crime is well-known. In fact, the crime map fits all too closely over the map of disadvantage. The majority of the highest crime areas are also the most deprived. Thus, a realistic, coherent approach to youth crime begins where youth crime begins: in the frustration, alienation, and despair that foster it.

The breakdown in law and order is intimately bound up with the breakup of families, communities and public services. Individuals operate within families and families operate within communities. In turn, they survive and thrive on quality public services to a crucial degree. All too often, when children and families at risk are not identified and supported by their communities and quality public services, we see the end results in the justice system.

It should be obvious that poverty, joblessness, and hopelessness can break down a sense of community, make it difficult for families to function, and reduce opportunities for children to realize their full potential. It is not that poverty or bad housing or poor education cause crime in the sense that being poor means you will become a criminal. Rather, it is the impact of these circumstances which children grow up in that make it more likely they will commit a criminal act.

Over 80% of Canadians now live in cities. But most of Canada's cities are in decline or poorly planned. Larger, older cities are characterized by poverty, inadequate transit systems, and crumbling infrastructure. Newer neighbourhoods are sprouting haphazardly. And small and medium cities are dealing with shrinking populations, markets and tax revenues. In order to be effective in preventing youth crime and building thriving communities, the federal government must develop a policy which includes adequate public reinvestment in infrastructure and a modern distribution of power and resources for cities.

It is also important to cultivate communities which nurture a sense of shared respect and responsibility. Otherwise, people simply move out of these communities or they take less pride in them and invest less effort in maintaining them. They install security systems, abandon public facilities and spaces, and eventually withdraw completely from the community. This makes both them and the community more vulnerable to crime. Therefore, governments must work with citizens and local community associations to develop strategies to raise community standards and foster a sense of civic responsibility and

community solidarity. This will make a difference in preventing crime because it will reduce specific opportunities and targets for criminals.

More importantly, what is at risk with decaying communities is its greatest strength – the values people share as a community. We know our children’s future is largely shaped by the values of their community. These values say we cannot be satisfied while some of our neighbours are jobless, poor, underfed, under housed, abused or abandoned.

Quality public services are the best means available to reflect these values and make a real difference in crime prevention. Quality public services can provide the infrastructure of hope and opportunity where families and communities are given the best chance of success. In a strong community, you need a good education for your kids, a job with a chance to earn a decent wage, good local health care, effective local policing, affordable child care, and local public transport.

Indeed, universally accessible public services often serve as a beacon of stability and hope in untenable and seemingly hopeless situations. That is because quality public services are a great equalizer. They narrow social and economic inequalities and provide a much needed sense of a shared purpose as a society.

Crime prevention through quality public services is not only good common sense; it also makes good economic sense. The Ypsilanti Perry Preschool project in Michigan, USA, better known as High/Scope, is a very good example. This study shows that a high quality preschool program - including school readiness, childcare and after-school programs - can save money while cutting youth crime. Rutgers University economist, Steven Barnett, found that the Perry Preschool program returned \$7 to the government for every \$1 invested. The children who participated in the program had significantly higher earnings and economic status, educational performance, and social responsibility than those who did not attend.

It costs over \$11 billion a year in Canada, at all levels, to maintain the criminal justice system. With eleven billion dollars, the justice system basically kicks in only after there has been another victim, after someone has been hurt or property has been destroyed or stolen and communities have been damaged.

Being smart on youth crime requires us to think about the front end of the system and divert resources into proactively preventing youth crime.

Strong families, strong communities, and strong public services are the building blocks of crime prevention. When these building blocks crumble, it is no wonder Canadians become more concerned about their safety and security.



Response #2: Diversion

DIVERSION AWAY from the justice system and into support programs can be a sensible and effective approach to dealing with many young offenders.

A large number of young people offend just once and the offence is most often minor and non-violent. Young offenders who are not guilty of serious or violent crimes represent over 80% of all youth convicted of crimes. The challenge is to nip this behaviour in the bud and prevent further criminality.

In order to do so, minor and non-violent first time young offenders should be approached with a sense of humility rather than humiliation. The solution for these kids is not to show them we are dispirited and have low expectations for them. Rather, through diversion programs, we need to create positive incentives and experiences that will help them to get back on the right track.

Diversion is important because the formal justice system can do a lot more harm than good for many kids – especially for minor and non-violent first time young offenders. This is true for two reasons.

Firstly, the criminal justice system can provide kids with a criminal self-image. Prior to arrest and court, many young offenders typically see themselves as good kids who shoplift an overpriced item from a big-box store that can easily afford the loss.

However, once these kids enter the justice system, official labels are applied and they quickly begin to see themselves as criminals. This invites more criminal behaviour. Character is formed early in life. If these kids are encouraged to build a criminal character, it will take a firm hold and inevitably return to reassert itself again and again.

Secondly, the criminal justice system - more specifically, a criminal record - can stigmatize kids in the eyes of significant others such as teachers, police officers, and potential employers. This stigma can quickly become a large obstacle, preventing kids from receiving the full support of important role models.

It simply does not make sense to subject minor and non-violent first time offenders to a justice system that can be the burial ground of ambition. We do not need the justice system to come down on these kids like a five-hundred-pound hammer. We do not need to fill our custodial facilities with kids that wish they could take back 5 minutes of their life.

So, in many instances, the best approach is to divert kids away from the youth justice system.

But let's be clear about two other things.

Firstly, when we talk about diversion programs, we are talking about kids who have been charged with nothing more serious than a first time minor or non-violent offence.

Secondly, diversion is not meant to forget the next day that the kid had committed a crime the day before. We are not suggesting kids who commit minor non-violent offences be granted immunity from criticism and accountability.

On the contrary, diversion programs must be designed to draw attention to the specific incident and the constellation of forces that contributed to the criminal activity. They must foster a clear sense of right and wrong, promote social discipline and personal responsibility, and find ways for young offenders to repay their victims and repair the damage done.

The kids in these programs must recognize that a willingness on their part to change their behaviour will be rewarded with opportunities. However, if they fail to do so, and fall back into criminal behaviour, their liberty will be progressively restrained.

Finally, diversion programs are also important because they improve the efficiency and effectiveness of the court system by allowing it to focus scarce resources on persistent offenders and priority crimes.



Response #3: Sentencing

THE TOP PRIORITY of our youth justice system must be to protect society. Tough prosecution and accountability is absolutely necessary for serious non-violent offenders, revolving-door criminals, and violent young offenders. Canadians must have confidence there will be a firm response for these young offenders.

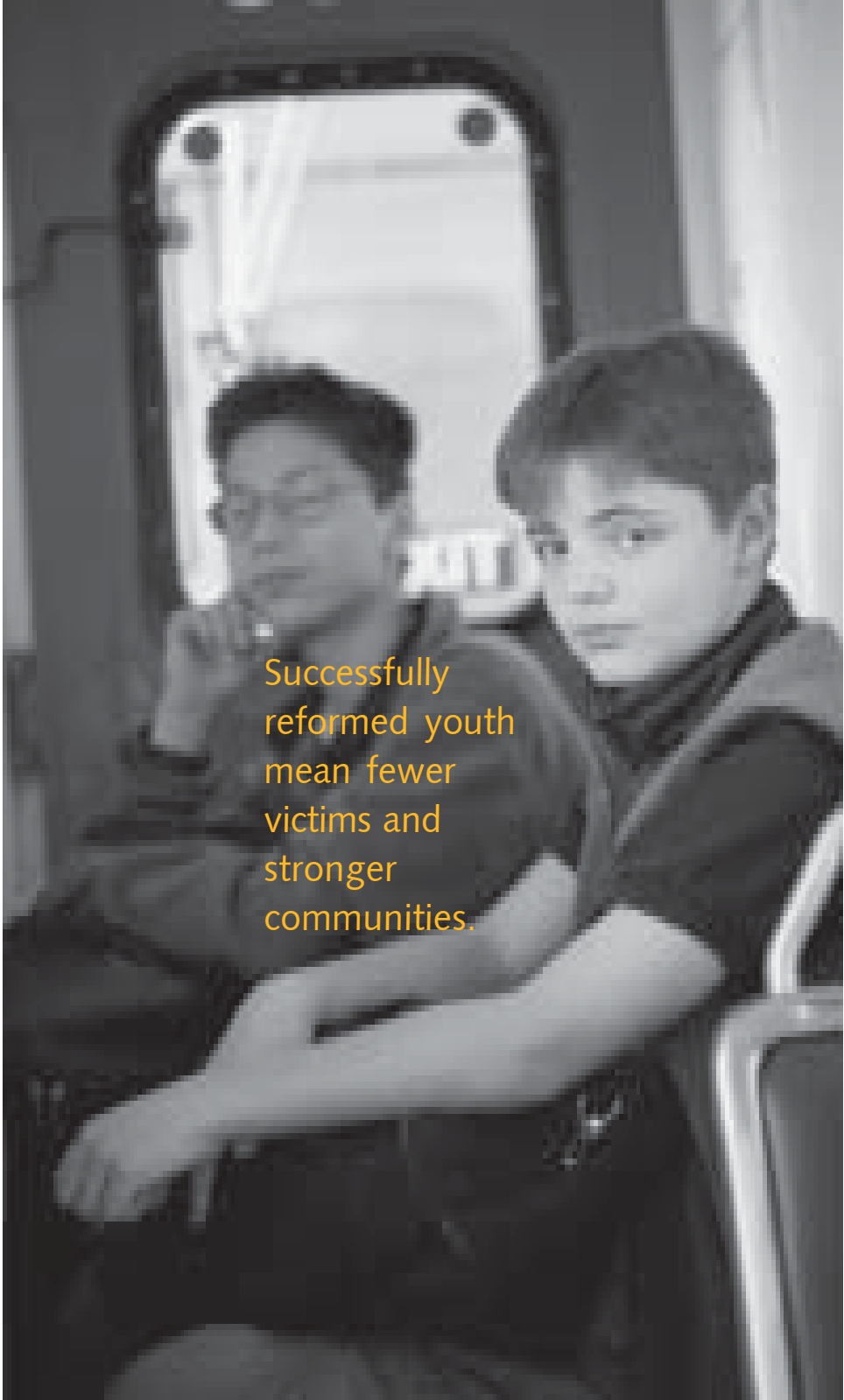
However, in applying sentences the system should make a distinction between violent offenders, who society needs to be protected from, and serious non-violent offenders. It should provide different and meaningful sentencing measures to deal with each.

Here we see two main options:

1. Probation and community-based sentences for serious non-violent offenders.
2. Custody, intense rehabilitation and reintegration for revolving door and violent offenders.

Our goal for serious non-violent offenders should not be to warehouse them and run the risk of them becoming more sophisticated and violent offenders. Rather, it should be to impose community-based sentences that provide the necessary support services and treatment programs, instill personal and socially responsible values, and focus on repairing the harm done to the victim and to the community. In order for this approach to succeed, we need a wide range of community-based programs and probation services that will bring stability to these offenders' lives.

On the other hand, serial and violent young offenders should face custodial sentences for their crimes. However, even when it comes to custodial sentences, we must not diminish efforts to rehabilitate and reintegrate young offenders. We all benefit if we can prevent youth from becoming dangerous adult offenders. Successfully reformed youth mean fewer victims and stronger communities.



Successfully reformed youth mean fewer victims and stronger communities.



Part Two

▶ ✧ YCJA: FOR THE RECORD ✧ ▶ ✧ GRAND PROMISES





The YCJA: For the record

ON FEBRUARY 4, 2002, the House of Commons passed the *Youth Criminal Justice Act* (YCJA). The new law replaced the *Young Offenders Act* (YOA) and came into force on April 1, 2003.

After 17 years of experience with the YOA, justice officials identified a list of significant problems in the youth justice system, including:

- absence of a clear and coherent youth justice philosophy was noted;
- incarceration was overused – Canada has the highest youth incarceration rate in the Western World, including the United States;
- courts were overused for minor cases that could be dealt with outside the formal court process;
- decisions resulted in disparities and unfairness in youth sentencing;
- transfer process to the adult system was too complex and inefficient;
- little distinction was made between serious and violent offences and less serious offences; and,
- not enough recognition was given to victims.

The YCJA was created to address these problems. In designing the new law, the federal government tried to strike the proper balance between getting tough with serious and violent young offenders while rehabilitating non-violent and less serious offenders and taking action to prevent crime.



New Measures: Tough on crime

The YCJA introduced many new provisions intended to make the consequences for the most serious and violent young offenders more meaningful. The most significant included:

- Longer, adult-style jail terms are possible for kids as young as 14 (under the YOA this was only possible for kids 16 and older) who commit murder, attempted murder, manslaughter, or violent sexual assaults. In addition, a fifth category for repeat, violent offenders was created to also allow offenders aged 14 and older to receive an adult sentence.
- An intensive custody and supervision sentence for high-risk youth, who are repeat violent offenders and may require longer periods of control, was added.
- Publication of the names of all youth convicted of a crime who receive an adult sentence was initiated. In addition, the names of 14-17 year-olds given a youth sentence for murder, attempted murder, manslaughter, aggravated sexual assault or repeat violent offences may be published. Publication is also allowed if a youth is at large and is considered by a judge to be dangerous.

A new measure was added to speed up the process of applying an adult sentence to a young offender:

- The transfer to an adult court process was eliminated. However, under certain circumstances, the youth court can directly impose an adult sentence after determining the young person is guilty of the offence.

A new provision recognizes an obligation to ensure that all young offenders, including the most serious, receive effective treatment and rehabilitation:

- An intensive custodial sentence was created for the most high-risk young offenders who are repeat violent offenders or have committed murder, attempted murder, manslaughter or aggravated sexual assault. The sentence requires a plan for intensive treatment and supervision of these offenders and requires a court to make all decisions to release them under controlled reintegration plans.

Victims were given some recognition in the Act:

- Victims now have a right to access youth court records. They have a role in formal and informal community-based measures. They have the right to information on extrajudicial measures. They can also advise a police officer, judge or other decision-makers on appropriate sentences and reintegration plans under certain circumstances.



New Measures: Tough on the causes of crime

In addition to a new statement of purpose and principles, the YCJA contains new measures aimed at rehabilitating non-violent, less serious and first-time offenders and preventing future offences. The YCJA:

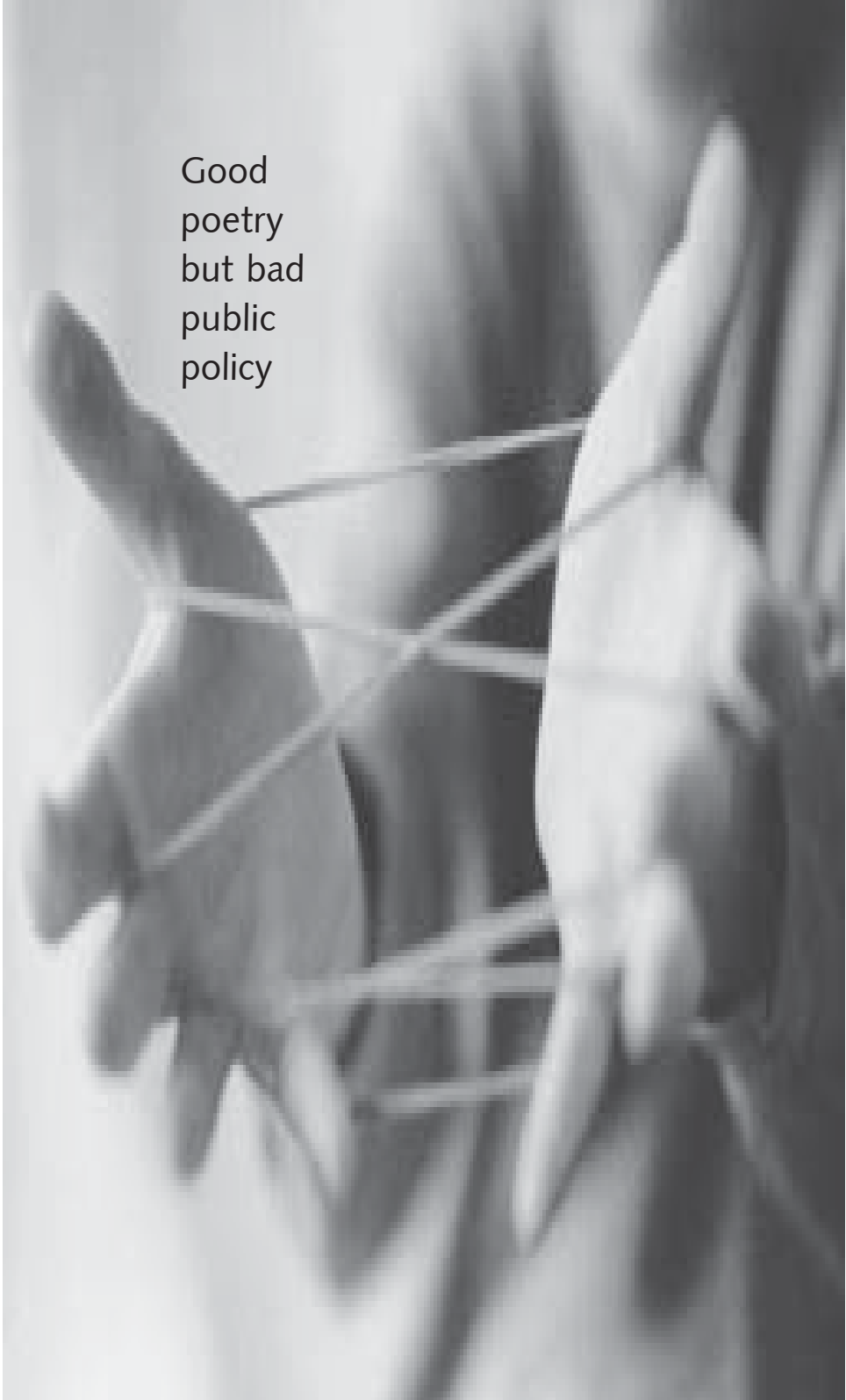
- Encourages diversion by giving the police greater flexibility to make use of alternatives to formal court procedures, such as verbal warnings or cautions, informal police diversion programs such as a “family group conference,” or more formal programs requiring community service or repairing harm done to victims.
- Encourages judges to use alternative sentences, including support and supervision programs, compensation and restitution orders, community and personal service orders, probation, and imposing conditions the youth would have to meet in the community.
- Requires judges to impose a period of supervision in the community following every period of custody. Youth workers are supposed to work with young offenders in custody to develop a reintegration plan and authorities are supposed to ensure the offender receives the necessary treatment and programs to successfully return to the community.

Grand promises. No grand action.

THESE NEW MEASURES in the Act are a step in the right direction. In fact, many of them fall in line with the approach outlined and advocated in Part One of this paper.

Unfortunately, to date, the high sounding promises made by governments and the grand new measures contained in the Act, have not been followed with grand action.

As outlined in the next section of this paper, as of this point in time, the Act has primarily amounted to good poetry but bad public policy.



Good
poetry
but bad
public
policy

3

Part Three

▶ ⚡ YCJA: FIVE FATAL FLAWS





The YCJA: Five fatal flaws

GOVERNMENTS TALK THE TALK. But they almost never walk the walk.

Their platitudes don't pay for programs. Their promises don't ease the workload or keep facilities open.

If there is one truth about the YCJA it is this: Governments are not providing the infrastructure needed to breathe life into the new measures. Consequently, the Act is a cruel joke on young offenders, for youth workers in secure facilities and on the people of Canada who expect and deserve more.

The Act is failing for five specific reasons:

- [1] Root causes are ignored.
- [2] Community and probation resources are missing.
- [3] Staff cuts and facilities are closed.
- [4] Secure custody workers and vulnerable offenders are abandoned.
- [5] Sentencing is unreliable.



1. Root causes are ignored

Allowing the roots of youth crime to grow deeper

TRADITIONALLY, governments have been slow to fund programs that work to prevent crime. It is important to acknowledge the federal government has created a National Crime Prevention Centre and given it the unique responsibility of implementing crime prevention projects in partnership with local governments, police, and communities. These projects will make a difference, program by program, family by family, and child by child.

The problem is that government economic and social policies are ensuring there are more at-risk children, living in more at-risk families, in less prosperous communities, and with fewer quality public services to support them. Thus, the projects mentioned above amount to a strategy of incrementally trudging sideways in the battle against youth crime.

The factors contributing to youth crime are enormous, stubborn and longstanding. They do not require piecemeal solutions, but rather a fundamental re-thinking of government policies in order to alter the social conditions that breed youth crime.

Despite the local initiatives supported by the National Crime Prevention Centre, most governments have, in actual fact, shown remarkable irresponsibility when it comes to taking action to prevent youth crime.

- For example, a determination to tackle poverty should go to the heart of any crime prevention strategy, but governments are not making progress on poverty. The poverty indicators, by which all great countries should be judged, hardly budged in the past decade. The 2001 census figures point to a Canadian society in which:
 - income disparity is growing;
 - child poverty rates are stubbornly stagnant;
 - an entrenching “have-not” new immigrant class is far worse off than previous generations of new Canadians;

- Third World living standards among First Nations people are continuing;
- lineups at food banks continue to grow;
- homelessness is on the rise; and,
- for many Canadians, the flood waters of hopelessness are lapping at their feet and rising, as they continue to live two or three paychecks away from disaster.
- For example, the cornerstone of an effective youth crime prevention strategy is job creation. A stable job means money and a chance to stay on the right track. However, the youth unemployment rate in Canada continues to hover around 17% for all young Canadians and is even higher for those without post-secondary education. By tossing in the towel on lowering poverty and unemployment rates, governments have pushed hundreds of thousands of more children and families towards crime.
- For example, successive federal and provincial budgets have declared war, not on poverty and unemployment, but on the poor and the unemployed, thereby staggering the social support system in this country and leaving many vulnerable people destitute on the streets. Through tax cuts and deep cuts to social programs governments have presided over an unprecedented redistribution of wealth from the poor to the very rich. The result has been an increasingly polarized society that has encouraged a lot of problems associated with social deprivation.
- For example, just as kids begin to prepare for their future, around the age of 16 or 17, by thinking about post-secondary education, they are increasingly faced with the possibility of not having any future at all. A lot of them know they simply cannot take on life-long student debt coupled with the prospect of a low-paying, insecure job at the end of their post-secondary education. This leads to anxiety and a sense of hopelessness amongst young people.
- For example, Canada's largest cities are crumbling and decaying. Simply put, federal and provincial governments are shirking their fiscal responsibilities by not providing enough resources to cities for renewal and regeneration.

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- For example, Canada's largest cities are crumbling and decaying. Simply put, federal and provincial governments are shirking their fiscal responsibilities by not providing enough resources to cities for renewal and regeneration.

Instead, their policies have created serious economic divisions in parts of cities, which have led to hostile and harsh communities, full of conflict, hopelessness and violence.

All of this is to say that governments in Canada are sowing the seeds of youth crime in their own backyard. What is required instead are activist governments committed to ensuring economic and social policy choices are made which support, not undermine families and communities. We need a systematic and integrated approach to youth crime prevention.

With political will and imagination, governments could address Canada's pressing social deficits and work towards a new, solid youth crime prevention infrastructure for the country and make lasting change for the better.



2. Community and probation resources are missing

IT IS NOT SURPRISING that the number of offenders referred to diversion and community-based programs has increased since the YCJA came into effect, since that was a main intention of the Act.

Given that governments created and implemented a legislative framework that mandates diversion and community-based programs to do a lot more, it would not be unreasonable for Canadians to expect a parallel increase in resources for these programs.

Moreover, if governments want to persuade the public and courts that it is a good thing to sentence fewer offenders to custody, then improving the credibility of diversion and community-based sentences should be paramount. And, once again, this would require governments to direct more resources to these services.

But this has not happened. The reality on the ground is not rosy. Many social workers, probation officers and youth workers have expressed growing frustration with increasing caseloads and not enough resources.

There is clear evidence a large and growing number of the non-profit agencies deliver many of the programs and services for young offenders in the community are under-funded, under-staffed and under-resourced. Increasingly, these agen-

cies rely on volunteers to run programs and services. Many are holding bingo and bake sales to support their programs. Some have simply closed their doors.

Furthermore, the increasing involvement of private for-profit agencies in the delivery of community-based young offender programs raises serious concerns about profit motives compromising rehabilitation objectives, standards of operation, transparency and accountability.

The new measures in the YCJA sound positive: “We will be enfranchising these kids in the community.” However, governments are failing to provide the adequate and stable resources that are required to ensure there are the vital community-based programs and services needed to bring stability to young offenders’ lives.

Consequently, many young offenders who receive a community-based sentence are simply being returned to desperate situations and undesirable environments with little support or supervision. This is not good for the young offender or public safety.

The new diversion and community-based sentencing measures in the YCJA will be ineffective as long as governments fail to provide the badly needed infrastructure for the delivery of community-based programs.

Serious concerns about public safety have also been raised due to the lack of resources and a comprehensive legislated mandate for young offender probation services.

Reports at a recent meeting of National Union probation officers from across Canada suggest there is a shortage of probation officers in many provinces, most notably in British Columbia, Saskatchewan, Manitoba, Ontario and New Brunswick.

In addition many of the more serious young offenders – who, prior to the implementation of the YCJA, would have received custodial sentences – are being referred to probation services.

As a result of staff shortages and the changing trends in youth sentencing, probation officers across the country are increasingly suffering from an excessive workload, a more complex case load, low morale, and burnout.

At the same time, the lack of a comprehensive legislated mandate for young offender probation services has resulted in a growing trend of young offenders being referred directly to community-based agencies by the police and courts.

In the past many young offenders would be referred to probation officers who would perform a comprehensive assessment, make sentencing recommendations, broker the appropriate community services, and provide adequate monitoring and enforcement. Now many young offenders are instead being referred directly to community-based agencies and youth workers.

For example, the YCJA requires police to administer a caution or refer youth to a community-based program, where appropriate, before charging them. The problem with that – as police officers themselves have publicly pointed out – is police officers are not “intake specialists”. So, there are concerns being raised about whether the appropriate assessments are being made and whether the appropriate community measure and program are being selected.

Further, it has been noted many community-based agencies are under-funded, under-resourced and under-staffed. Add to this fact the youth workers employed by these agencies do not have the same training and expertise as probation officers and cannot be held publicly accountable to the same degree and consistent manner that probation officers working in the public sector can be.

The referral of young offenders by the police and courts directly to these community-based agencies – that is, bypassing probation services altogether unless the court explicitly orders these services as part of the sentence – should raise concerns about how well young offenders are being assessed and supervised in the community.

Public safety and young offender rehabilitation would be improved if community-based agencies focused their scarce resources on the important role of offering programs that assist, counsel, and treat young offenders.

Also, the duties of young offender assessments, the brokering of appropriate services, supervision, and enforcement of sentence conditions should remain with professionally trained probation officers.

In other words, the police and courts should refer young offenders to probation services first. The probation officers can then make an appropriate assessment of the youth’s needs, broker the appropriate services with a community agency and supervise the youth while he/she is in the community.

This kind of coordinated and integrated system of community-based young offender services is possible if: a) governments provide more resources for the community-based programs delivered by community agencies; b) additional front-line probation officers are hired; and c) a comprehensive and distinct legislated mandate is provided for youth workers employed in community agencies and probation officers employed by the public sector.



3. Staff cuts and facilities are closed

THE NEW PROVISIONS of the YCJA designed to keep non-violent, first-time and minor offenders out of handcuffs, out of court, and out of jail unless absolutely necessary, are having a dramatic impact on youth custody facilities across the country.

Youth facility workers, Chief Crown Prosecutors, and legal experts across the country have all noticed there simply are far fewer offenders going into custody. We are seeing decisions from judges who are indicating that, although in the past a particular case would have ended in custody, they are now not going to put them in custody under the YCJA.

The National Union recently completed a survey of youth facility workers across the country. The survey revealed that since the implementation of the new YCJA, most custodial facilities across the country are operating well below capacity; in some cases they are running at 50% capacity with offender counts projected to decline.

The survey also indicated that declining offender counts have resulted in layoffs for staff in both open and secure custody in British Columbia, Saskatchewan, New Brunswick, Newfoundland & Labrador, and Nova Scotia. And in Ontario, layoffs are probable in the near future. In addition, across the country, there are far fewer shifts for part-timers, casual and auxiliary workers and any vacant full-time positions are not being filled.

More alarming is the pace at which governments have moved to close custodial facilities and units since the implementa-

tion of the YCJA. Consider the following examples of facilities that have been closed:

- a) In Nova Scotia: The Shelbourne Youth Centre.
- b) In Newfoundland: Two group homes for young offenders in Gander and Whitbourne have been closed and the Corner Brook Youth Assessment Centre.
- c) In Prince Edward Island: The Tyne Valley Youth Centre.
- d) In Manitoba: The Ridgepoint Unit at the Milner Ridge Correctional Facility.
- e) In Saskatchewan: The Norsask Youth Centre and the female unit in North Battleford Youth Centre.
- f) In Alberta: The Lethbridge Young Offenders Centre; young offender units at the remand centres in Red Deer and Medicine Hat.
- g) In British Columbia: The High Valley Correctional Facility near Kamloops; the Lakeview Youth Custody facility in Campbell River; and Boulder Bay Secure Custody Centre.

Let us be very clear about one thing: we do not support any move to close youth custodial facilities or to lay off staff in these facilities. We believe closing these facilities is not the right or smart thing to do.

We contend that:

- a) The move to close these facilities is a fiscally-driven exercise by governments that have a blind fixation for cost-cutting. The new sentencing measures in the YCJA are simply a convenient excuse for nation-wide austerity measures in the field of youth corrections.
- b) These facilities and staff are bearing the brunt of the government's failure to react to the new provisions of the YCJA in a comprehensive way and plan the youth criminal justice system as a coherent whole.
- c) It is premature to close youth facilities at this point because the effect of the YCJA might be temporary and not sustained.
- d) It is premature to close youth facilities at this point because we know the economic and social policies of provincial

governments are sowing the seeds for more youth crime in the future. The direct link between poverty and economic hardship and crime is well established. Given current government policies of slashing vital social and income support programs and cutting public sector jobs and freezing wages, it would not be surprising if we were to witness a rise in youth crime in the near future. Finding space in appropriate youth facilities could become a juggling act for governments.

e) It is premature to close youth facilities without a clear alternative plan in place. The haphazard and unplanned nature of most of these closures is emphasized by the fact that the closures are rarely, if ever, referenced in any ministry service plan. What are the government's alternatives? What kind of planning is really going on?

f) The hundreds of youth custody workers who are losing their jobs have years of experience that are invaluable to the youth justice system and the kids that need help. With outright closures the government and the system are at risk of losing their greatest resource – the trained, experienced and committed youth custody workers.

g) Closing these facilities will exacerbate the twin problems of distance and cost in terms of transporting young offenders and family interventions. The location of current facilities allows for more family involvement and this goes a long way to getting kids back on the right track. As facilities close and families are required to travel long distances from their home community, the number of interventions will certainly decrease.

We believe there are important, effective alternatives to closing these facilities. We propose that, rather than closing these facilities, provincial governments should convert them into *Centres for Community Partnerships*.

That is to say, facilities could be redesigned, current staff retained, and new staff hired through the creation of *Centres for Community Partnerships* which offer a broad mix of services depending on provincial and community needs. This includes:

a) Continuing to offer open custody and short-term remand services so they are available when required.

b) Working with community partners on youth crime prevention efforts. These facilities could become a refuge and a

place of change for young kids who are homeless, seeking to escape gangs, addicted to drugs/alcohol, or working the streets as prostitutes. Rather than simply allowing vulnerable kids to be swallowed up by gangs, these facilities could offer a safe environment for those kids who want to improve their lives by escaping the harsh and hostile environment they live in.

c) Offering formal and informal diversion programs in cooperation with local police.

d) Redesigning youth facilities, or parts of them, and using them as Open Custody Foster Care Homes. In Newfoundland, for example, the government has been trying for years to find adequate spaces in open custody foster care homes to place young offenders. Why close a youth facility while searching for spaces in foster care homes?

e) Providing and coordinating services related to probation and community-based sentences, such as: anger and aggression management; school and learning assistance; addiction counselling; career counselling; money management; parenting classes; and other assistance to help kids straighten out.

f) Providing 'transition to community' services which facilitate the reintegration of offenders from secure custody back into the community. These services could include many of those mentioned above, but they could also include more intense supervision programs.

The intention of redesigning these facilities is not to replace the programs that already exist in the community. Those services must remain and governments must provide new investments in them. On the contrary, the intention would be to support, complement, and ease the burden on existing community programs.

Doing so would contribute greatly to ensuring youth justice services are comprehensive and consistent and delivered in an integrated fashion, rather than the fragmented and unstable system that exists now.

The main point here is that governments have a choice. They do not have to, and should not, close youth facilities. We urge governments to meet the challenge and make the positive changes that are required.



4. Secure custody workers and vulnerable offenders are abandoned

- **Secure custody workers**

SECURE CUSTODY facilities are a key player in the youth justice system. They must instill confidence in the public that Canadian communities are protected and offenders are receiving effective rehabilitation programs. But in order to do so, governments must be unambiguous in their support for these facilities and the work of youth facility workers. However, instead of investing in secure custody facilities and staff, our governments have habitually shirked their responsibilities.

In spite of its critical position in the system, the front line job of a secure facility youth worker continues to be characterized by poor working conditions that include regular abuse from offenders; a lack of respect and recognition for doing a tough job; demoralization; threats of job cuts and privatization; a regime in which offenders are more and more in control; and the youth worker's experience and knowledge of the system is too often under-utilized.

Governments must improve working conditions for secure facility youth workers. One concrete and immediate step that would make a real difference would be for governments to remove the threat of privatizing these facilities. It should remain the direct responsibility of the public sector to administer the punishment recommended by the youth courts. It is not appropriate for corporations to profit out of incarceration. Privatization has diverted energy and concentration from the real problems in the youth correctional system. Governments that have moved to privatize corrections should take privatized facilities back into the public sector to ensure proper accountability and responsibility is restored.

One of the biggest problems in secure custody facilities today is not whether the environment is "too harsh" or "too soft." The problem is whether there is any proper regime in which the facility workers and other staff are in control or whether the regime is informally run by the offenders, with the strong enforcing their will against the weak, and crime flourishing as much within the custodial facilities as outside of them.

This is a crucial issue because the main point of custody is to put serious and violent offenders in a place where they cannot prey on people anymore. The point is not to simply alter the cast of potential victims by putting them in a place where they are still able to beat, rape, and abuse one another.

Yet we continue to read reports from across the country describing incidents involving gangs, weapons, drugs and serious injuries requiring hospitalization. Gangs are ruling these institutions through fear and force and the drug trade is flourishing. In some cases, it has been reported by staff that gang members have said they actually commit crimes so they will be sent back to the facility where they can exact revenge for left over grievances from the street.

Consider the stories coming out of the Toronto Youth Assessment Centre. The Globe and Mail has described “vigilante-style beatings”. In fact, the Ontario Minister of Community Safety and Corrections is on record as saying that “everybody acknowledges that the institution is not a proper and adequate facility for young offenders.” And an Ontario youth court judge called the place “a hellish institution”.

If secure custody is going to make any difference, governments simply cannot allow situations in institutions to deteriorate to the point where there are absolutely no deterrents for youth who commit assaults, start riots, or trash cell blocks. These institutions cannot become drug dens and gang recruitment clubs.

Canadians expect these facilities to be spartan and disciplined institutions with tough rules, modest rewards for obeying and certain punishment for defiance. The young offenders in these facilities must know their actions have consequences, both good and bad. And they must know the facility staff is clearly in charge.

- **Rehabilitation and reintegration programs**

The YCJA acknowledges transition from custody to the community is a critical phase in a young offender’s disposition.

Yet youth in custody still consistently express concerns that personal progress and rehabilitation through in-custody programs is undermined by a lack of planning, support, and continuation of resources after they return to the community.

Concerns have been raised about the structure and operation of rehabilitation and reintegration programs in custodial facilities. It has been reported that the system of programs as a whole is patchy in operation, at times fumbling in implementation, and too often existing in an environment of half-hearted support.

Successfully reformed and reintegrated youth mean fewer victims and stronger communities – we all benefit when we can prevent youth from becoming dangerous adult offenders. Rehabilitation and reintegration planning for young offenders must begin at the outset of a custodial disposition and a variety of services, programs and resources must be made available to support this effort.

It is also important that governments encourage communities to be partners in the rehabilitation and reintegration of young offenders through initiatives, such as restorative justice models which involve families, victims and communities.

- **Young offenders with mental health problems**

When it comes to secure custody youth facilities, there is another very important and long-standing problem which our governments can no longer afford to ignore: too many young people with mental health problems are being confined in custodial facilities and they are not receiving adequate support services or treatment programs.

The early identification, intervention, protection and treatment services for young people with mental health problems would result in less use of young offender services and facilities

Unfortunately, the necessary services to identify those youth who need early help to address mental health problems, before they enter the justice system, are routinely unavailable in communities across Canada.

At the same time, children's mental health treatment centres are struggling to meet increasing demands with decreasing resources.

The budget for children's mental health treatment services in Ontario has been cut by almost 10 per cent in the last five years. As recently as April 1, 2004 children's mental health centres across Ontario were hit with program cuts, shutdowns and layoffs.

The result will be longer wait times for children in crisis. Child health studies in Ontario have estimated that at least 7,000 identified children are waiting for service. The average wait in Ontario for treatment for children in crisis is currently 21.6 weeks.

Extensive under-funding of treatment centres followed by lack of necessary investments in community care and child protection services has resulted in swelling numbers of people on the streets who exhibit nuisance or “scary” behavior.

Combine this with unfair stereotypes of those with mental illness, particularly their perceived risk of violence towards others, and more pressure to get them off the streets seems inevitable.

As a result of all this, growing numbers of young people with mental health problems are falling into the “cracks” between social services, child protection services and health systems, and landing in the criminal justice system.

Individuals with mental health problems are more vulnerable to detection and arrest for nuisance offences (e.g. trespassing, disorderly conduct), are more likely to be remanded in custody for these minor offences, and to spend disproportionately more time awaiting a sentencing disposition.

And too many of these individuals are being confined in secure custody facilities which are becoming crowded repositories for young people with mental health problems, many of whom have been arrested for petty crimes.

Further, mental health support services and treatment programs in custodial facilities are extremely limited or often not available or accessible. Despite the recognition of high rates of mental health problems among young offenders, mental health treatment is generally not included as a core element of rehabilitation. Moreover, the circumstances and environment in custodial facilities often aggravate symptoms and make young offenders a potential target for victimization by other inmates.

It is a problem that, in most provinces, children’s mental health services are not mandated services, but are instead funded *at the discretion* of a Ministry. Children’s mental health services need to be legislated to ensure stable funding and access to prevention and treatment services. Legislation provides

roots, a sense of security and recognition of shared values. Without it, services become vulnerable to the changing values and policies of governments.

All governments must make the necessary investments in mental health resources and other support services, such as housing and social assistance, in order to ensure early and adequate identification, intervention and treatment for young people with mental health problems.

Finally, all levels of government must make an effort to foster inter-sectoral linkages between the mental health, child protection and youth justice systems.

- **Aboriginal young offenders**

One of the greatest challenges for the youth justice system is to address the exceptionally high rates of custodial sentences for young Aboriginal offenders.

A soaring young male Aboriginal population is likely to exacerbate this situation since it is well known that young males commit more crimes than other segments of the population. Indeed, some researchers have projected a doubling of the proportion of Aboriginal people in jail over the next ten years if nothing else changes.

Numerous federal and provincial aboriginal justice commissions and studies have been completed over the last decade. They have all concluded that while poverty, marginalization, social and economic disadvantage, and difficult transitions from rural to urban realities all play a role in the high number of Aboriginal youth committing crime and receiving custodial sentences, the role of systemic discrimination cannot be underestimated.

We can no longer accept the status quo. The usual federal government strategy – tackling the problems one at a time, independently – is tantamount to putting a band-aid on a broken leg.

It is time for the federal government to design a new deal for Aboriginal youth in Canada and take firm fiscal and policy steps toward that too-long-delayed objective.



5. Sentencing is unreliable

THUS FAR, THE YCJA has failed to improve the credibility of youth sentencing in Canada.

Studies by Statistics Canada suggest that fear of youth crime in Canada – more specifically, fear of violent youth crime – is on the rise. And public opinion research suggests that a majority of Canadians consider the courts to be too lenient in their youth sentencing practices, especially when it comes to violent young offenders.

The rising fear of youth crime combined with the negative evaluation of the judiciary obviously creates a major problem for the public's overall confidence in the youth criminal justice system.

If Canadians do not have confidence in it, the system cannot function properly. People will turn to the system less often when they need help and more crimes will go unreported.

If a lack of public faith in the system becomes pervasive, people will clamour for dramatic change and reform will be inspired by panic and political expedience. This kind of situation would not help anybody.

There is no doubt that the media plays an important role in shaping the public's perception that youth sentences are too lenient. Far too often the media provide inadequate and selective information about youth sentencing – focusing mainly on cases that are in some way exceptional or sensational.

That being said, media reports are only one of the reasons why most of the public has formed the view that youth sentencing practices in Canada are too lenient and unreliable.

The problem of sentencing disparity – in terms of proportionality and statistical patterns of sentencing – has also been identified as another major reason.

The fact is, judges have considerable flexibility in sentencing options and the new YCJA leaves a significant amount of discretion in the hands of the police and the courts.

Furthermore, under Canada's criminal justice system, the provincial Courts of Appeal effectively serve as the final tribunal on sentencing matters. This means, instead of one court attempting to achieve some uniformity in sentencing on a national basis, there are many courts attempting to achieve some uniformity on a purely provincial basis.

A coherent way of approaching these problems related to sentencing would be for the federal government to create a permanent Canadian Sentencing Commission.

The Commission could be responsible, among other things, for reviewing issues related to the public perception of sentencing, youth recidivism rates, sentencing guidelines and calculation, sentencing disparities, and the effectiveness of various sentencing alternatives.

The Commission could report to Parliament on an annual basis and recommend modification of the YCJA where necessary.

Another important reason why the public has formed the view that youth sentencing is unreliable is because the system is unable to respond swiftly.

One look into Canada's criminal courts, especially in the big cities, reveals a picture of a system on the verge of breakdown.

According to the Ontario Auditor General, the backlog in the province's criminal courts now adds up to over 99,000 cases. Judges may end up dismissing tens of thousands of cases, including youth cases, because the accused are not getting the speedy access to justice they deserve and need if the system is going to act as an effective deterrent against future criminal activity.

Governments need to make significant investments to speed up the court system and improve the public's confidence in the ability of the system to deal with young offenders swiftly.



4

Part Four

► GOVERNMENTS MUST CHANGE COURSE





Governments must change course

THE RECORD SHOWS that on April 1, 2003, when the YCJA came into effect and governments in Canada came to a fork in the road – when they had the opportunity to forge ahead with genuine reform – they decided to disinvest in the youth criminal justice system.

Consequently, the YCJA and its new approach to youth crime is at risk of coming apart at the seams. As long as governments continue along this path, real solutions to prevent and control youth crime will not be found. The pity is that an opportunity for real progress is being squandered. The tragedy is that the problems we need to solve will become that much tougher.



Recommendations

WE PROPOSE a 10-point plan for improving the YCJA and effectively preventing and controlling youth crime.

—[1]—

Crime prevention through quality public services

It is recommended governments at all levels work together to tackle the root causes of youth crime by providing:

- more direct job creation initiatives aimed at youth, better stimulation of the private sector to create employment for youth, and increased job preparation efforts to minimize the barriers and increase the employment capabilities of young job seekers;
- the highest standard of health care delivered through a public system which is accessible, universal, portable, comprehensive and publicly administered;
- a strong public education and training system which is accessible, affordable, accountable and delivered through public education institutions that provide life-long learning opportunities;
- a comprehensive system of community social services and income support programs which ensures all Canadians of equality, dignity, comfort and the opportunity to participate in all aspects of Canadian society;
- a non-profit, universally accessible, national child care and early childhood education program delivered through the public sector;
- a national, non-profit, co-operative housing program;
- a new deal for Canada's cities providing a modern distribution of power and resources that will allow cities to create a viable economic base for vital services and infrastructure;
- more resources for the police to work in communities to prevent crime and reduce fear;

- a specific role for youth in the development of crime prevention policies;
- resources to create local, community-based organizations whose aim is to bring together those responsible for housing, social services, recreation, schools, policing and justice to develop a coordinated plan to tackle the situations that breed youth crime.

—[2]—

Federal funding

It is recommended the federal government increase its share of funding for young offender programs to 50% of the costs. Because the YCJA and its new approach originated with the federal government, and the provinces currently cover in excess of 70% of the cost of the youth justice system, returning to the 50-50 cost share arrangement for young offender programs that was in place prior to 1989 is the appropriate and effective thing to do.

—[3]—

No more privatization of the youth justice system

It is recommended all levels of government immediately halt any effort to privatize youth justice services, programs and facilities. This is in order to ensure the delivery of quality youth justice services by highly trained and publicly accountable public employees, whose professionalism and commitment to the public good guarantee high standards of service and operation.

—[4]—

Diversion programs

It is recommended diversion continue to be the first response of the youth justice system to minor and non-violent first time offenders, and the federal and provincial governments allocate new, significant resources to ensure diversion alternatives are widely available and effective.

—[5]—

Community-based programs and probation services

It is recommended that governments:

- a) strengthen and expand community-based young offender programs by making a sustainable long-term financial commitment to these services and programs;
- b) hire additional front line probation officers;
- c) provide a separate and specific legislative mandate for youth workers in community-based agencies and public sector probation officers.

—[6]—

Youth corrections: Open custody

It is recommended governments immediately halt the closing of youth facilities. Instead, governments should convert these facilities into *Centres for Community Partnerships*, which offer a broad mix of services depending on provincial and community needs. This includes: open custody and remand services; open custody foster care home services; drop-in services for vulnerable youth; diversion programs; programs related to probation and community-based sentences; and “transition-to-community” programs for youth released from secure custody. Governments should also retain existing staff, provide training where necessary, and hire new staff to operate these new facilities.

—[7]—

Youth corrections: Closed custody

It is recommended that governments:

- a) reaffirm secure custody youth facilities are a key part of the youth justice system by making significant investments in these facilities and their employees to improve working conditions and put in place a proper regime in which the staff are clearly in control;

- b) improve and expand in-custody rehabilitation and reintegration programs;
- c) encourage communities, families and victims to be partners in the rehabilitation and reintegration of young offenders through initiatives such as restorative justice.

—[8]—

Young offenders with mental health problems

It is recommended that governments:

- a) provide children's mental health services with a legislated mandate to ensure access to prevention and treatment services;
- b) make the necessary investments in mental health resources and other support services, such as housing and social assistance, in order to provide early and adequate identification, intervention and treatment services;
- c) take the appropriate steps to encourage referral of young offenders with mental health problems to more appropriate services and safer environments than custodial facilities;
- d) make an effort to foster inter-sectoral linkages between the mental health, child protection and youth justice systems.

—[9]—

Aboriginal young offenders

It is recommended that the federal government:

- a) work with all players in the youth criminal justice system to review the central recommendations of recent Aboriginal justice commissions and chart the progress that has been made thus far; identify opportunities for immediate and long term fiscal reform, economic development, and social program enhancement; and create and implement a national Aboriginal youth justice strategy accompanied by the laws necessary to turn intentions into action;
- b) consult with Aboriginal groups to design and implement a data collection system that will provide detailed information

to compare the impact on, and treatment of, Aboriginal and non-Aboriginal persons by the youth justice system, and to evaluate the success of alternative Aboriginal justice intervention programs, such as tribal courts and restorative justice programs;

c) encourage and provide adequate and stable funding to Aboriginal communities to develop early youth intervention programs, based on the development of a full range of employment, cultural, social and recreational opportunities.

—[10]—

Sentencing reform

It is recommended that:

- a) The federal government create a permanent Canadian Sentencing Commission to collect and distribute information about current sentencing practices; create a national database of similar cases and sentencing outcomes; provide comprehensive research on youth recidivism rates; review current sentence calculation practices; undertake consultations with public sector youth justice workers and their unions; develop and monitor innovative sentencing initiatives and study the effectiveness of alternative youth justice models.
- b) Provincial governments make significant investments in our court system in order to ensure young offenders are dealt with swiftly and to eliminate any backlogs to ensure no cases are dropped.

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